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No. 82-1915

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

STATE OF CALIFORNIA,
Petitioner,

VS.

VINCENT HARVIER, as Chairman of the Quechan Tribal Council, *et al.*,
Respondents.

On Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

AMICI CURIAE BRIEF OF STATES OF ARIZONA, FLORIDA, IDAHO, NEVADA, NORTH DAKOTA, OKLAHOMA, SOUTH DAKOTA, UTAH, WISCONSIN AND WYOMING IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF INTEREST

1. General Interest of States

The amici states are frequently embroiled in controversies with the Indian tribes who reside within their borders. Disputes between Indian tribes and the amici states primarily concern hunting and fishing rights, water rights, natural resource development, state authority to tax and regulation of gaming. Many times, Indian tribes have questioned state authority to regulate the activities of non-Indians on reservations just as the Quechan Indian Tribe has in this case.

In most lawsuits involving these issues, the Indian tribe has sued the state. However, in some instances, the state has sought judicial resolution of a particularly volatile controversy. In the latter situation, states have been forced to use their imagination to circumvent the tribal immunity doctrine in so far as it bars actions against Indian tribes. In some cases, the federal government has been named in lieu of the Indian tribe. For the most part, the efforts of amici states to obtain judicial resolution of disputes involving Indian tribes have been thwarted by the tribal sovereign immunity doctrine which deprives states of a proper forum in federal court.

2. Specific Interest of Individual States

The State of South Dakota is currently involved in litigation with the Lower Brule Sioux Tribe of South Dakota, concerning jurisdiction over hunting and fishing by all persons on the reservation, and within those areas acquired by the United States for the Fort Randall and Big Bend Dam and Reservoir projects. These areas were taken by the United States pursuant to the Flood Control Act of 1944. The United States District Court for the Central Division of the District of South Dakota, by order of April 30, 1982, decided that the State had exclusive jurisdiction to regulate hunting and fishing within the taking area, and reserved the question as to jurisdiction to regulate on the reservation. *Lower Brule Sioux Tribe v. State of South Dakota, et al.*, Civ. 80-3046, D.S.D. filed April 30, 1982. The appeal of the decision is currently pending before the Court of Appeals for the Eighth Circuit. Similar problems will obviously arise on other South Dakota reservations. The tribal sovereign immunity doctrine impedes a judicial resolution of those problems, and others, including jurisdiction to tax non-Indians, regulation of state granted water rights, and control of non-Indian gambling on the reservation.

The State of Florida is presently attempting to require non-Indians engaging in certain construction activities on Indian Reservations to comply with state environmental protection laws. Florida's Indian Reservations are generally located on environmentally sensitive wetland areas. Florida has also unsuccessfully attempted to apply the state's gaming laws (bingo statute) to tribal gaming activities. See *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 102 S.Ct. 1717.

The State of North Dakota has four Indian reservations within its geographic boundaries and has an Indian population in excess of twenty thousand people. North Dakota is presently faced with questions involving oil and gas taxation, municipal bonding, and Indian law jurisdictional questions which directly relate to tribal sovereign immunity.

The State of Nevada claims title to Pyramid Lake, a large navigable lake enclosed by the interior boundaries of an Indian reservation. In *Block v. United States*, 43 CCH S.Ct. Bull. P. B2353 (May 2, 1983), the United States Supreme Court held that actions by states to quiet title to lands wrongfully held by the United States must conform to the Quiet Title Act of 1952 (28 U.S.C. § 2409a). Now Nevada has been foreclosed by the Quiet Title Act's statute of limitation provisions from quieting title to the Lake. State jurisdiction over non-Indians has effectively been precluded by federal and tribal exclusion of State agents. If the State of Nevada, as California, is precluded from bringing suit against the tribal officials challenging unlawful tribal practices, the State simply has no judicial remedy.

The State of Wisconsin was faced with a claim of tribal sovereign immunity from suit in a case involving an attempt by the Lac Courte Oreilles Band of Lake Superior Chippewa Indians to regulate the hunting and fishing activities of nonmembers on navigable waters within reser-

vation boundaries. See *State of Wisconsin v. Baker*, 464 F.Supp. 1377 (W.D. Wis. 1978) (Dec. on motion to dismiss); 698 F.2d 1323 (7th Cir. 1983). The tribe has filed its petition for writ of certiorari with the Supreme Court (No. 82-1756). Although the tribe's sovereign immunity claim is no longer an issue in that case, Wisconsin expects that the issue will arise in future cases.

SUMMARY OF ARGUMENT

The majority opinion below holds that California cannot sue tribal officers in their "official" capacity to restrain them from carrying out an allegedly unlawful tribal ordinance, but holds that the district court dismissal order is nonappealable because it is not "clear" that California is unable to sue them in their "individual" capacity. However, it is reasonably clear that California has no adequate remedy against the tribal officers in their "individual" capacity, because California cannot logically sue them in that capacity for *official* acts in carrying out an allegedly unlawful tribal ordinance. Moreover, even if California *could* sue them in their "individual" capacity, any resulting judgment in California's favor would run against the individual defendants rather than the office that they occupy, thus affording California a hollow victory if the Tribe elects new tribal officers.

Therefore, the practical effect of the lower court decision is to prevent states and other litigants from obtaining effective relief against tribal officers to prevent them from carrying out unlawful tribal policies. In this sense, the lower decision places Indian tribes above the law, in that no remedy is available to restrain them from committing unlawful acts. The lower decision thus creates an anomaly in the sovereign immunity doctrine as applied to Indian tribes, since the doctrine does *not* bar actions to restrain unlawful conduct by officials of the federal government and the states.

Therefore, this Court should review this case to make clear that no such anomaly exists, and that tribal officials can be sued in their official capacities to restrain them from committing unlawful acts. Further, the Court should clarify the tribal immunity doctrine generally, and perhaps determine whether the doctrine has continued validity at this time.

Thus, the amici, having an interest in limitation of the tribal sovereign immunity doctrine, request that the Court grant California's petition for writ of certiorari.

ARGUMENT

INTRODUCTION

This case raises significant issues concerning the interrelationship of federal, state and tribal authority over activities on Indian reservations. The State of California has attempted, by two different lawsuits, to obtain a judicial declaration of its authority to regulate hunting and fishing activities of non-Indians on the Fort Yuma Reservation in California. Assuming that the doctrine of tribal sovereign immunity has validity, the Ninth Circuit properly held that California lacked authority to obtain a declaration in its first action, since the action was filed directly against the Tribe. In the second action, however, California did not sue the Tribe, but instead sued the tribal officers in their representative capacity for carrying out unlawful acts on behalf of the Tribe. California thus followed the customary practice in sovereign immunity cases of suing the sovereign official in his representative capacity for acting unlawfully on behalf of the sovereign. See *e.g., Andrus, Secretary of the Interior, et al. v. Allard, et al.,* 444 U.S. 51 (1979); *Andrus, Secretary of the Interior v. Idaho, et al.,* 445 U.S. 715 (1980); *Schweiker, Secretary of Health and Human Services v. Wilson, et al.,* 450 U.S. 221 (1981); *Harris, Secretary of Health and Human Services v. McRae, et al.,* 448 U.S. 297 (1980).

The district court and the majority of the Ninth Circuit held, however, that this customary practice has no validity in actions against tribal officers acting on behalf of the Tribe. In the district court's view, California cannot obtain relief against tribal officials that cannot be obtained directly against the Tribe. Pet. App. 22; Pet. 4 n. 3. The district court failed to appreciate that the sovereign immunity doctrine—as applied in actions to restrain sovereign officers from acting unlawfully on behalf of the sovereign—is somewhat fictitious, in that relief *can* be obtained against sovereign officers in circumstances where the relief cannot be obtained directly against the sovereign, as long as the relief is to restrain future illegal conduct. See, *e.g.*, Tribe, *American Constitutional Law* 133 (1978); *Ex parte Young*, 209 U.S. 123, 159, 160 (1908). Thus, the district court misapplied the sovereign immunity doctrine in the tribal context.

The majority opinion of the Ninth Circuit also misapplied the sovereign immunity doctrine in the tribal context, although for slightly different reasons. The majority opinion held, as did the district court, that actions cannot be maintained against tribal officers in their "official" capacity to restrain them from carrying out unlawful acts on the behalf of the Tribe. However, the majority opinion went beyond the district court decision in holding that it is not "clear" that California could not amend its complaint to sue the tribal officers in their "individual" capacity. Thus, the Ninth Circuit determined that the dismissal order was nonappealable. As the amici states now explain, both conclusions are wrong, and the practical effect of the decision is to prevent states and other litigants from effectively restraining Indian tribes from engaging in an unlawful course of conduct. The decision thus raises an important issue of federal law that should be reviewed by this Court.

I

IN ATTEMPTING TO RESTRAIN TRIBAL OFFICERS FROM PURSUING UNLAWFUL TRIBAL POLICIES, STATES AND OTHER LITIGANTS LACK AN ADEQUATE REMEDY AGAINST THE TRIBAL OFFICERS IN THEIR "INDIVIDUAL" CAPACITIES

It is reasonably clear that states and other litigants, in attempting to prevent tribal officers from carrying out allegedly unlawful tribal policies, have no adequate remedy against the tribal officers in their "individual" capacities, and the majority opinion erred in suggesting otherwise. Any such remedy is inadequate for three distinct reasons. First, states and other litigants cannot logically sue tribal officers in their "individual" capacity for *official* acts undertaken on behalf of the tribe, where such acts are within the scope of their authority under tribal law. That is, actions against tribal officers in their "individual" capacity can logically be maintained only where they act *ultra vires* their authority under tribal law, not where the tribal law is itself in potential violation of federal law. As the dissenting opinion below properly states:

> "[W]here the majority errs, and where I disagree, is in its suggestion that suing the tribal officials for acting *ultra vires* is the *only* way to invoke the doctrine of that case [*Ex parte Young*]. There are two theories that invoke the doctrine of *Ex parte Young*. [Citation omitted.] One, certainly, is that government officials acted beyond the scope of their statutory authority. [Citations omitted.] This theory the majority recognizes. The other theory consists of an allegation that the government officers, though not acting *ultra vires*, were 'carrying out official duties in violation of the Constitution.' [Citations omitted.] It is this theory the majority completely ignores and on which California rests its complaint." Pet. App. 9-10 (emphasis in the original).

California's complaint in this case is that the tribal officers are violating federal law by carrying out an unlawful tribal ordinance, not that they are acting *ultra vires* their authority under tribal law. By holding that California must amend its complaint to allege the latter cause of action, the majority opinion holds that California should assert a cause of action for which there is no remedy.

Second, even if a plaintiff *could* obtain relief against tribal officers in their "individual" capacity where they act on behalf of a tribe, such relief would not be particularly helpful or useful to the plaintiff's cause. Any judgment against tribal officers in their "individual" capacity necessarily runs against them as individuals, and not against the office that they occupy. Therefore, the tribe could easily defeat any adverse judgment simply by electing or appointing new tribal officers. To ensure that the judgment runs against the office rather than the individual, a plaintiff must properly bring its action against the tribal officers in their "official" capacity. Thus, even assuming that California could "save" its complaint by naming the tribal officers in their "individual" capacities, any judgment favorable to California would be inadequate to protect the interests for which it brought its lawsuit.

Third, if a plaintiff cannot sue tribal officers in their "official" capacity, the purposes of the sovereign immunity doctrine are not served by the majority opinion's holding that a plaintiff *may* be able to sue them in their "individual" capacity. This holding appears to suggest that the validity of pleadings, at least in the tribal immunity context, are measured by the styling of the complaint, not by the substantive conduct which gives rise to the complaint. This result simply elevates form over substance. Such a result creates an anomaly in the sovereign immunity doctrine as applied in the tribal context. In other sovereign immunity cases, this Court has reached the merits of the

cases brought against sovereign officials without even considering whether the action was maintained in their "official" or "individual" capacity. See, *e.g., Andrus, Secretary of the Interior v. Allard, et al.*, 444 U.S. 51 (1979); *Andrus, Secretary of the Interior v. Idaho, et al.*, 445 U.S. 715 (1980). The majority opinion below appears to suggest a different result under the tribal immunity doctrine. It would seem either that actions *can* be maintained against tribal officers to restrain "official" acts, or that such actions *cannot* be maintained. If such actions *can* be maintained, the majority opinion was wrong in holding otherwise. If such actions *cannot* be maintained, it would seem that the result cannot be changed by simply changing the styling of the complaint.

II

THE MAJORITY OPINION BELOW, IN PRACTICAL EFFECT, BARS LITIGANTS FROM RESTRAINING TRIBAL OFFICERS WHO, ON BEHALF OF THE TRIBE, CARRY OUT A TRIBAL POLICY IN VIOLATION OF FEDERAL LAW

In holding that California should have presented to the district court the question whether California has a remedy against the tribal officers in their "individual" capacity, the majority erred for any such remedy is inadequate to protect the interests for which California brought its lawsuit. The practical effect of the lower decision is thus to prevent California and other litigants from challenging the validity of a tribal ordinance that, under California's view, violates federal law.

The majority opinion thus appears to hold that the tribal immunity doctrine is governed by different rules than those that generally apply to the sovereign immunity doctrine in other contexts. This Court has squarely held that the state sovereign immunity doctrine, as expressed in the

Eleventh Amendment of the U.S. Constitution, does not shield the states from actions to restrain violations of federal law. See, *e.g., Ex parte Young*, 209 U.S. 123 (1908); *Edelman v. Jordan*, 415 U.S. 651 (1974). Similarly, this Court has held that the sovereign immunity doctrine does not shield federal officials from actions to restrain such violations. See, *e.g., Larson v. Domestic & Foreign Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609, 621-622 (1963). It would therefore be anomalous to shield tribal officials from such actions by invocation of the sovereign immunity doctrine. This Court has never suggested the existence of such an anomaly. To the contrary, in dictum in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59 (1978), this Court stated that, "*as an officer of the Pueblo [Tribe]*, petitioner . . . is not protected by the tribe's immunity from suit," thus suggesting that tribal officers *can* be sued for carrying out unlawful acts on behalf of the tribe. (Emphasis added.)

This result is also supported by sound public policy. If neither tribes nor tribal officers can be sued when the tribe carries out an unlawful policy, then Indian tribes are apparently above the law in that no remedy exists to correct unlawful tribal action. Certainly Indian tribes have no legitimate interest in carrying out policies in violation of federal law. As the dissenting judge in the case below properly stated:

> "I am not persuaded that subjecting Indian tribes to federal court actions for prospective relief under *Ex Parte Young* will unduly interfere with the sovereign powers of Indian tribes. Nor am I persuaded that tribal officers may, without a grant of authority from Congress, interfere with the enforcement of valid state laws, and then claim that the Tribe's sovereign immunity bars the state from suing for injunctive relief in federal court. Just as the sovereignty of a tribe must

> fall before the will of Congress, so too a tribe's immunity must yield when the state brings suit to enforce prospectively the will of Congress." Pet.App. 17.

Indeed, the conduct of the tribal officials in this case, carrying out an allegedly unlawful tribal ordinance, is potentially in violation of the U. S. Constitution. California seeks a declaration that the tribal ordinance is in violation both of federal statutes and the federal common law describing the limited applicability of state laws on Indian reservations. If the tribal ordinance is invalid either under federal statutory or common law, it is invalid under the Supremacy Clause, which provides that federal law "shall be the supreme law of the land." U.S. Const., Art. VI, § 2. As the dissenting judge properly stated:

> "If its [California's] theory of law is correct the ordinance may offend the Supremacy Clause and actions taken under color of that ordinance would thus be carried out in violation of the Constitution." Pet.App. 13.

The majority opinion, in suggesting a distinction between "official" and "individual" acts of tribal officers, has apparently followed the distinction of other federal courts in cases where the plaintiff seeks the recovery of tribal assets, rather than attempts to restrain the Tribe from engaging in an unlawful course of conduct. Other federal courts have held, in actions to recover tribal assets, that actions can only be maintained against tribal officers in their "individual" rather than "official" capacity because the plaintiff would otherwise be able to obtain tribal assets that could not be recovered in an action against the tribe itself. See, *e.g., Bottomly v. Passamaquoddy Tribe,* 599 F.2d 1061, 1064 (1st Cir. 1979). In other words, the distinction between "official" and "individual" conduct may be appropriate in cases involving retrospective rather than prospec-

tive relief, where—assuming the validity of the tribal immunity doctrine—relief *cannot* be obtained against tribal officers that would indirectly operate against the tribe. The distinction is clearly inappropriate in cases, as here, where the relief *can* be obtained indirectly against the tribe, in the sense that tribal officers can be restrained from carrying out unlawful acts on behalf of the tribe. This Court has clearly held that the sovereign immunity doctrine, as applied to the federal government and the states, prohibits actions for retrospective but not prospective relief. See *Ex parte Young*, 209 U.S. 123 (1908); *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682 (1949). By applying the distinction between "official" and "individual" acts in this case, the majority opinion creates an anomaly in the sovereign immunity doctrine as applied in the tribal context.

III

THIS COURT SHOULD REVIEW THIS CASE TO CLARIFY THE TRIBAL IMMUNITY DOCTRINE, AND PERHAPS TO DETERMINE WHETHER THE DOCTRINE HAS CONTINUED VALIDITY

In the view of the amici states, additional reasons exist that justify review of the lower decision. First, the doctrine of sovereign immunity, which has caused considerable confusion in its usual context, apparently causes even greater confusion in the tribal context. California, in its second lawsuit, followed the customary and appropriate practice by naming the tribal officers in their capacity as tribal representatives. Indeed, if California had not sued them in that capacity, it would have run the risk that the Tribe could effectively negate any adverse judgment by simply electing or appointing new tribal officers. California, although following the customary practice, now finds that its action has again been dismissed on sovereign immunity grounds, owing to the confusion and ambiguities that surround this entire doctrine. The Ninth Circuit decision

makes unclear the circumstances in which the tribal immunity doctrine applies, or whether the doctrine prohibits actions to restrain unlawful courses of conduct. This Court should grant the petition to clarify the circumstances in which the doctrine applies. Until these circumstances are clarified, the amici states will not know how to proceed in cases where their respective interests are in conflict with tribal interests. Since the tribal immunity doctrine derives from the federal common law rather than constitutional or statutory enactments, this Court—which originally developed the doctrine—now has a special obligation to clarify it.

Further, the Court should undertake to determine whether the tribal immunity doctrine retains validity at this time. The doctrine originated in an earlier age, when Indian tribes were largely thought to be sovereign entities that were wholly immune from the application and effect of state laws. See *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506 (1940). In the modern age, however, this Court has attempted to reach an accommodation between federal, state and tribal interests as applied to on-reservation activities, and this accommodation supports the limited application of state laws on Indian reservations. See, *e.g., Organized Village of Kake v. Egan,* 369 U.S. 60, 72, 75 (1962); *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 142 (1980). Accordingly, Indian tribes are no longer recognized as having the attributes of sovereignty as in former times. Indeed, this Court has commented that tribal immunity from state laws now depends primarily on Congress' preemptive authority over Indian tribes and reservations, not on the inherent sovereignty of the tribes themselves. *McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164, 172 (1973). In light of this new adjustment in the relations of tribes and states, it may be that the sovereign immunity doctrine, as applied to Indian tribes, is an anachronism.

IV

THE CASE IS RIPE FOR REVIEW

The amici states agree with California that the case is ripe for review at this time. Although the majority opinion dismisses the appeal for lack of jurisdiction, the dismissal is predicated on the assumption that California should amend its complaint to sue the tribal officers in their "individual" capacity. As explained above, California lacks an adequate remedy to sue the tribal officers in this capacity, since (1) it cannot logically sue them in their "individual" capacity for *official* acts committed within the scope of their tribal authority, and (2) even if California *could* obtain "individual " relief against the defendants, the relief would run against the defendants as individuals rather than the office that they occupy. Thus, the majority opinion, in practical effect, deprives California of the sole remedy by which California can obtain relief that will effectively bind tribal representatives who carry out an unlawful tribal ordinance.

V

THE APPEALABILITY ISSUE INVOLVES AN IMPORTANT FEDERAL ISSUE THAT SHOULD BE REVIEWED BY THIS COURT

Finally, this case presents a significant question whether orders dismissing complaints are "final decisions" within the meaning of 28 U.S.C. § 1291. Although most circuit courts of appeal take the position that such orders are final and appealable, the Ninth Circuit takes the position that such orders are final and appealable only if it is "clear" that the complaint could not be "saved" by amendment. Moore, *Federal Practice* (hereafter "Moore") ¶ 110.13(1) (2d ed. 1982).

The purpose of the finality rule is to prevent multiple appeals in the same proceeding. See *Catlin v. United*

States, 324 U.S. 229, 233-234 (1945). There is little danger that multiple appeals will occur in this case, since, as stated above, California's only practical remedy is against the tribal officers in their "official" capacity and the majority opinion below bars California from asserting this remedy.

In the view of the amici states, the finality rule should be liberally construed where, as here, an order dismissing a complaint effectively precludes the plaintiff from asserting the only remedy that will serve the interests for which the lawsuit was brought. This result would seem particularly compelling where, as here, an earlier appellate panel has already ruled on the appealability issue in favor of the appellant. See Pet. 5. Professor Moore has stated that the finality rule "should be interpreted to prevent the loss of the right of an appeal, not to facilitate loss." Moore, ¶ 110.18(3). In this case, the Ninth Circuit appears to have taken the opposite approach, invoking the finality rule to unfairly prevent California from reaching the merits of the tribal immunity issue, even though this issue must be decided before California can reach the merits of its complaint. Since California's only effective remedy is against the tribal officers in their "official" capacity, and since the district court held that California cannot assert this remedy, the dismissal order was clearly final and appealable under 28 U.S.C. § 1291.[1]

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[1]Although the merits of California's complaint are not raised in this proceeding, it should be noted that this Court has held that the states have jurisdiction over on-reservation activities of non-tribal members where legitimate state interests are involved, and where Congress has not preempted state laws. See *Washington v. Confederated Tribes,* 447 U.S. 134 (1980); *Moe v. Salish & Kootenai Tribes,* 425 U.S. 463 (1976). In *New Mexico v. Mescalero Apache Tribe,* ... U.S. ..., 43 CCH S.Ct.Bull.P. B3251 (June 13, 1983), this Court recently held that New Mexico does not have concurrent jurisdiction over fishing and hunting by nonmembers on the reservation. The latter decision noted:

> "While under some circumstances a State may exercise concurrent jurisdiction over non-Indians acting on tribal reservations, [citations omitted] such authority may be asserted only if not preempted by the operation of federal law. [Citations omitted.] . . . [T]he determination does not depend on mechanical or absolute conceptions of state or tribal sovereignty, but calls for a particularized inquiry into the nature of the state, federal, and tribal interests at stake." *Id.* at B3260.

In undertaking the "particularized inquiry" in *New Mexico*, the Court emphasized that (1) the regulatory program in that case was a joint federal-tribal program, in that the tribal program was approved by the Secretary of the Interior, was based on recommendations provided by the Secretary, and was closely supervised by the Secretary, *id.* at B3254-B3255, B3266, and (2) the State was unable to "identify any regulatory function or service . . . that would justify" the exercise of concurrent state jurisdiction, and the State "cannot point to any off-reservation effects that warrant State intervention." *Id.* at B3269.

The amici states understand that California's complaint is predicated on the position that (1) the Quechan Tribe's regulatory program is not a joint federal-tribal program in any sense, and (2) California has a legitimate interest in asserting concurrent jurisdiction over on-reservation hunting and fishing by nonmembers of the Tribe. In fact, California argued strenuously in the first case against the Tribe that the tribal ordinance is inconsistent with a regulatory program established by the U. S. Fish and Wildlife Service under 50 CFR §§ 20.101-20.105. California further argued that federal law specifically authorizes states to adopt laws for the protection of certain wildlife species that are more stringent than federal laws, 16 U.S.C. § 708, and California asserted that this provision applies to nonmembers on Indian reservations. Also, California argued that the fish and game species in the case were migratory, and thus that the tribal ordinance has an effect on off-reservation resources. If the evidence supports California's various arguments, the present case would be distinguishable from New Mexico.

CONCLUSION

In the view of the amici states, this Court should grant the petition for writ of certiorari herein.

Respectfully submitted,

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